IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7380 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MINOL ACIDS & CHEMICALS PVT. LTD.THRO ITS WORKS MANAGAER

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 7380 of 2001

MR BS PATEL for Petitioner No. 1

MRS RANJAN B PATEL for Petitioner No. 1

MR PR ABICHANDANI, APP for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/03/2003

ORAL JUDGEMENT

A complaint was filed by the petitioner-original complainant in the Court of learned J.M.F.C., Ankleshwar, for the offence punishable under Sec.138 of the Negotiable Instruments Act, read with Secs.406 and 420 of the Indian Penal Code which has been registered as Criminal Case No.2917 of 1994 wherein after recording the verification, process was issued by the learned Magistrate under Sec.138 of the N.I.Act against the original accused.

2. It appears that since original accused No.3 avoided acceptance of process issued by the court, it could not be served upon him due to which, the complaint which has been filed in the year 1994 could not be proceeded with by the Court and, hence, an application was submitted by the present petitioner before the court below requesting to drop the proceedings qua accused No.3.

3. Upon hearing the learned advocates appearing for the respective parties, said application was rejected by the court below vide order dated 22-3-2001 only on the ground that the accused No.3 signed as a Director of the firm and that there is a prima-facie against him. Hence, the present petition.

4. Heard learned counsel for the respective parties at length.

5. Facts remain that though the complaint in which process has been issued by the court is of the year 1994, due to non-service of process upon accused No.3, trial could not be proceeded with. According to learned counsel for the petitioner, original accused No.3-Shri N.P.Reddy is residing at 317/Phase II, First Cross, Satavachari, Vellur (N.A.) Dist. in Tamil Nadu.

6. It is a peculiar case wherein the request made by the petitioner complainant for deleting the name of accused No.3 due to non-service of process of the court has been rejected by the learned Magistrate only on the ground that there is a prima-facie against him. Facts also remain that it is the privilege of the complainant not to proceed with the complaint filed by him qua particular accused due to non-service of process of the court and hence, looking to the facts and circumstances, it was required for the learned Magistrate to have accepted the request made by the complainant. If the learned Magistrate is of the opinion that the complaint would not be maintainable in absence of accused No.3, then he can dismiss the same at the end of trial. But

learned Magistrate cannot refuse the request made by the complainant in deleting the name of accused No.3. In this view of the matter, the order passed by the court below is required to be quashed and set aside and the petition is required to be allowed.

7. This petition is allowed. Order dated 22-3-2001 passed by the learned J.M.F.C., Ankleshwar in Criminal Case No.2917 of 1994 is quashed and set aside. Name of original accused No.3 is ordered to be deleted from the criminal case. Learned Magistrate is directed to dispose of the criminal case in question expeditiously. Rule is made absolute accordingly.

(R.P.DHOLAKIA,J.)

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